THE UNIVERSITY OF CHICAGO LAW REVIEW

VOLUME 10

1942-43

THE UNIVERSITY OF CHICAGO PRESS

• • •

THE BAKER & TAYLOR CO.

THE CAMBRIDGE UNIVERSITY PRESS

PUBLISHED OCTOBER, 1942; JANUARY, APRIL, AND
JULY, 1943

• • •

COMPOSED AND PRINTED BY THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS, U.S.A.

V.10

TABLE OF ARTICLES—AUTHORS

ABEL, ALBERT S. Decentralized Administrative Techniques 437
BRADEN, GEORGE D. Umpire to the Federal System 27
COHEN, JULIUS. The Labor-Welfare Cases: A Socio-Legal Approach 375
COUDERT, FREDERIC R. Experiment in International Justice 478
ELDRIDGE, F. HOWARD. Justice Holmes: Another Aspect 417
FISHER, HARRY M. Judicial Mediation: Pre-Trial Conference 453
GREGORY, CHARLES O. Union Peacetime Restraints in Collective Bargaining . . . 177
HOOVER, J. EDGAR. The Scientific Crime Detection Laboratory 335
INSTITUTE OF LIVING LAW. Combating Totalitarian Propaganda: The Method of Exposure 107
JUDSON, CLAY. Renegotiation of Government War Contracts 193
KRONSTEIN, HEINRICH. Dynamics of German Cartels and Patents. II 49
LAUGHLIN, CHARLES V. A Study in Constitutional Rigidity. I. 142
LENNOX, WILLIAM G. Amnesia, Real and Feigned 298
MORGAN, EDMUND M. Suggested Remedy for Obstructions to Expert Testimony by Rules of Evidence 285
POUND, ROSCOE. A Ministry of Justice as a Means of Making Progress in Medicine Available to Courts and Legislatures 323
RHEINSTEIN, MAX. Methods of Legal Thought and the Conflict of Laws 466
SMITH, HUBERT W. Scientific Proof and Relations of Law and Medicine 243
WARREN, SHIELDS. Criteria Required to Prove Causation of Occupational or Traumatic Tumors 313
ZISKIND, DAVID. Union Agreements: A War Weapon 1

TABLE OF ARTICLES—TITLES

AMNESIA, REAL AND FEIGNED. William G. Lennox 298
COMBATING TOTALITARIAN PROPAGANDA: THE METHOD OF EXPOSURE. The Institute of Living Law 107
CRITERIA REQUIRED TO PROVE CAUSATION OF OCCUPATIONAL OR TRAUMATIC TUMORS. Shields Warren 313
DECENTRALIZED ADMINISTRATIVE TECHNIQUES OF THE FEDERAL GOVERNMENT. Albert S. Abel 437
DYNAMICS OF GERMAN CARTELS AND PATENTS. II. Heinrich Kronstein 49
EXPERIMENT IN INTERNATIONAL JUSTICE. Frederic R. Coudert 478
JUDICIAL MEDIATION: HOW IT WORKS THROUGH PRE-TRIAL CONFERENCE. Harry M. Fisher 453
JUSTICE HOLMES: ANOTHER ASPECT OF HIS LIFE AND PHILOSOPHY. F. Howard Eldridge 417
LABOR-WELFARE CASES: A SOCIO-LEGAL APPROACH, THE. Julius Cohen 375
METHODS OF LEGAL THOUGHT AND THE CONFLICT OF LAWS. Max Rheinstein 466
MINISTRY OF JUSTICE AS A MEANS OF MAKING PROGRESS IN MEDICINE AVAILABLE TO COURTS AND LEGISLATURES. A. Roscoe Pound 323
RENEGOTIATION OF GOVERNMENT WAR CONTRACTS. Clay Judson 193
SCIENTIFIC CRIME DETECTION LABORATORY, THE. J. Edgar Hoover 335
SCIENTIFIC PROOF AND RELATIONS OF LAW AND MEDICINE. Hubert W. Smith 243
STUDY IN CONSTITUTIONAL RIGIDITY. I. A. Charles V. Laughlin 142
SUGGESTED REMEDY FOR OBSTRUCTIONS TO EXPERT TESTIMONY BY RULES OF EVIDENCE. Edmund M. Morgan 285

PAYNE
JUL 21 1945
JUL 17 '45 Bdg. 20.

UMPIRE TO THE FEDERAL SYSTEM. George D. Braden 27
UNION AGREEMENTS: A WAR WEAPON. David Ziskind 1
UNION PEACETIME RESTRAINTS IN COLLECTIVE BARGAINING. Charles O. Gregory . . 177

BOOK REVIEWS

BASSET: A Cataloging Manual for Law Libraries. (Fritz Veit) 363
CALAMANDREI: Eulogy of Judges. (Paul Sayre) 505
CHAMBERLAIN, DOWLING, AND HAYS: The Judicial Function in Federal Administrative Agencies. (Ray A. Brown) 236
COOK: The Logical and Legal Bases of the Conflict of Laws. (Max Rheinstein) . . . 466
FARRELL: American Legal Records, Vol. 4. (George L. Haskins) 95
FRIEDRICH AND MASON (eds.): Public Policy. (Ford P. Hall) 234
GRAY: The Rule against Perpetuities (4th ed., 1942). (Harry A. Bigelow) 228
HUDSON: The Permanent Court of International Justice. (Frederic R. Coudert) . . 478
KING AND PILLINGER: A Study of the Law of Opinion Evidence in Illinois. (George F. James) 104
KNAPPEN: Constitutional and Legal History of England. (Charles H. McIlwain) . . 97
LLEWELLYN AND HOEBEL: The Cheyenne Way. (Walton Hamilton) 231
LOTT AND HANES: Law in Medical and Dental Practice. (Eleanor M. Humphreys) . 365
MAGILL: The Impact of Federal Taxes. (Henry C. Simons) 502
NUSSBAUM: Principles of Private International Law. (Max Rheinstein) 466
PERKINS: Elements of Police Science. (E. W. Puttkammer) 99
SHULMAN AND JAMES: Cases and Materials on Torts. (Lawrence Vold) 359
SIEBENSCHUH: Administration of Municipal Legal Services: The Chicago Law Department. (Murray Seasongood) 100
THURSTON AND SEAVEY: Cases on Torts. (Lawrence Vold) 359
WARREN: Traffic Courts. (David G. Monroe) 238
WASHINGTON: Corporate Executives' Compensation. (Wilber G. Katz) 93
WHITE (ed.): The Future of Government in the United States: Essays in Honor of Charles E. Merriam. (Philip W. Buck) 103
WRIGHT: A Study of War. (P. E. Corbett) 366

NOTES

APPLICATION OF THE RULE IN SHELLEY'S CASE 344
OWNERSHIP AND INCOME TAXATION: THE CLIFFORD DOCTRINE 488
REPORT ON THE DETROIT RACE RIOT 497
SECRET LIENS AND THE CHANDLER ACT 220
UNREALIZED APPRECIATION—COMMENTS ON MODERN DIVIDEND STATUTES 350
WORKMEN'S COMPENSATION FOR MARITIME EMPLOYEES: THE JENSEN DOCTRINE RE-EXAMINED 339

CASES NOTED

Chenery Corp. v. Securities and Exchange Com'n. 70
Columbia Broadcasting System v. United States 88
Fashioncraft v. Halpern 495
In re McGarry 354
Lebold v. Inland Steel Co. 77
Loew's, Inc. v. Basson 216
Myers v. Young Men's Christian Ass'n 212
Sanitary District of Chicago v. Manasse 91
State Tax Com'n of Utah v. Aldrich . 84
Stephens v. Stephens 499
Williams-Ashman v. Price and Williams 207

INDEX DIGEST

A

ADMINISTRATIVE LAW

Administrative Agencies:

Activities of Department of Justice in combating totalitarian propaganda 120–22, 127–33

Record of the Shipbuilding Stabilization Committee as an example of how collective bargaining has been utilized to stabilize production 24–25

Reviewability of licensing regulation 88–91

State Department supervision of foreign agents 113–15

In General:

Tendencies toward decentralization in federal administrative techniques 437–52

Judicial Control:

Reviewability of FCC orders . . 88–91

Procedure:

Procedure in renegotiation of government war contracts . . . 198–203

AGENCY

Duty of trustee's agent to trust estate 207–11

ALIENS

Registration:

State alien registration act held to conflict with national act . . . 40–45

ATTORNEY AND CLIENT

Privileged Communications:

See *Evidence: Witnesses: Privilege*

B

BANKRUPTCY

Liens:

Secret liens and Section 60a of the Chandler Act 220–27

Preferences:

Assignments of accounts receivable as a transfer under Section 60a of the Chandler Act 224–27

C

CARTELS

Extent of Use of Cartels:

Development of German cartels and patents under Hitler 49–69

CHARITIES

Rights and Liabilities of Charitable Organizations:

Tort liability of charitable corporation 211–16

COMPARATIVE LAW

Duty owed in United States and in England by trustee's agent to trust estate 207–11

CONFLICT OF LAWS

In General:

Comparison of European conflict of laws with that of the United States 471–77

Criticism of Restatement of the Conflict of Laws . . 466–71, 474–75

Methods of legal thought and the conflict of laws 466–77

Jurisdiction of Courts: Divorce:

Application of Williams doctrine in Illinois 499–501

Remedies: Right of Action:

Workmen's compensation and the Jensen doctrine 339–44

CONSTITUTIONAL LAW

Adoption and Amendment of Constitutions:

Experience in amendment of state constitutions in:

Alabama 146–50

Illinois 150–55

Indiana 155–60

Minnesota 160–71

Mississippi 171–76

Study of states having faulty systems of amending their constitutions 142–76

Civil and Political Rights:

Right of a union to bargain collectively 177–92

Freedom of speech and picketing 495–97

Legislative Powers:

Recent constructions of due process and commerce clauses increase legislative powers 27–48

Searches and Seizures:

Compulsory medical examinations of citizens 282–83

CONTRACTS

War contracts 21, 23

CORPORATIONS

Dissolution:
Power of majority stockholders to dissolve a prosperous corporation 77–84

Dividends:
Availability of unrealized appreciation of fixed assets 350–54

Offices and Directors:
Corporate executives' compensation 93–95

Rights and Duties:
Stock purchases by directors during voluntary reorganization . . . 70–77

Reorganization:
Stock purchases by directors during reorganization 70–77

Shareholders' Rights: In General:
Fiduciary relationship in which majority stockholders stand to minority regarding dissolution . . 77–84

COURTS

Powers:
Disbarment of judges in Illinois for careless conduct 354–58

CRIMINAL LAW

In General:
Criminal Appeal Act of 1907 . . . 255
Criminal Lunatics Act of 1884 . . . 255
Disparity between legal and medical approach to mental disease . 252
Fault an outmoded concept in criminology; danger to society the important consideration . . . 256–57
Flaws in relating mental defects to crimes 257–58
Historical development of scientific crime detection 267–72
Relation of mental disease to crime 253–63

Accessories:
American Prison Association—uniform classifications of mental defects 262
Forensic pathology—functions and problems 263–67
The Scientific Crime Detection Laboratory: services and functions 335–38

Defenses:
Amnesia: causes, types, and relation to crime 298–312
Insanity: epilepsy: Nature of and tests for 259–63
See also *Evidence*

Reforms:
See *Evidence*

D

DIVORCE

Jurisdiction:
Application of *Williams* doctrine in Illinois 499–501

E

EVIDENCE

Determination of Admissability:
Rule against opinion evidence in Illinois 104–5

Nature and Scope:
A ministry of justice to make progress in science available to courts and legislatures 323–34
Inadequacy of present sources of information essential to wise lawmaking 324–32
Inadequacy of traditional rules of evidence and legal mechanisms 245–47, 285–97
Tumors, criteria required to prove causation 313–22
occupational tumors . . . 314–18
traumatic tumors 318–22

Opinions:
The hypothetical question 246, 294–96

Best Evidence:
Need for extension of the medical examiner system 264–65

Presumptions:
Rules in McNaghten's Case . 250–57

Witnesses: Competency:
Inadequacy of general practitioners as medical experts 247–50
Tests to determine proper medical testimony 249–50

Witnesses: Privilege:
American Law Institute's proposals regarding physician-client privilege 291–92
American Law Institute's proposals regarding privilege against self-incrimination 287
Effect on scientific evidence . 286–88
Lawyer-client privilege . . . 288–90
Origin of the privilege against bodily examination 287
Physician-client privilege . . . 290–92
"Privileged communication" statutes ill-conceived 245
Relation of physician-client privilege to public health . . . 290–91
Rule against involuntary bodily examination now antiquated . 245–46

Witnesses: Credibility:
The "shopping around" for experts 246–47
See also *Trial*

H

HISTORY OF LAW
In General:
Constitutional and legal history of England 97–99
Early American law as described in "The Superior Court Diary of William Samuel Johnson" . 95–97
Relation of law to medicine . 243–84

I

INCOME TAXATION
Who Is Subject to Tax:
Recent implications of the Clifford doctrine 488–95
Where income is from trust and settlor retains substantial ownership 488–95

INHERITANCE TAXES
Where Property May Be Taxed:
Multiple state taxation of intangibles 84–87

INTERNATIONAL LAW
Permanent Court of International Justice 478–87
Use of arbitration in the settlement of international disputes . . 478–87

INTERSTATE COMMERCE
Power of Congress:
Increased under recent Supreme Court decisions 27–48
Power of States:
Increased under recent Supreme Court decisions 27–48

J

JUDGES
Duties 505

JUDICIAL NOTICE
Limitations 325–31

JUDICIAL REFORM
Mechanisms to provide impartial testimony 247–50, 293

JURISPRUDENCE
In General:
Confused with legal problems arising from medical practice . . . 279
Nature of a lawsuit 285
Nature of Law:
The legal order 323–25
Schools of Jurisprudence:
The significance of the "Brandeis brief" in the development of "sociological jurisprudence" . . 384–88

JURY
Competency of Jurors:
Need for simplified instructions 252–53
Right to Trial by Jury:
Requirement a barrier to scientific medical findings 248, 252–54, 275–77

L

LABOR LAW
Boycotts:
Application of Sherman Act and Norris-La Guardia Act to secondary boycotts 216–220
Collective Bargaining:
Union peacetime restraints in collective bargaining 177–92
Picketing:
Enjoinability of picketing for closed shop 495–97
Sherman Act:
Application to labor activities in restraint of trade 177–83
Statutes:
Analysis of briefs and arguments of counsel defending constitutionality of labor-welfare legislation 375–416
maximum hour legislation 376–83, 394–96
minimum wage legislation 384, 396–402
legislation regulating methods of wage payment . . . 389–91
legislatjon restricting sale of prison-made goods . . 404–6
unemployment compensation acts 406–8
collective bargaining acts 408–14
Wisconsin Employment Peace Act upheld against claim that it conflicted with Wagner Act . . . 37–40
Arguments of counsel defending constitutionality of workmen's compensation acts 391–94
Strikes:
Wartime no-strike clauses . . . 15–18
Unions:
Enforceability of union agreements 3
Workers' participation in management 20–24

Effect of the war on union agreements 1–26
War production and overtime . . . 7
Training labor for war work . . 10–14
Effect of safety and health on war work 14

LABOR UNIONS
See *Labor Law*

LAWYERS
Responsibility of the legal profession for certain errors in handling of Detroit race riot 497–99

LEGAL BIOGRAPHY
Mr. Justice Holmes in the light of his environment 417–36

LEGAL EDUCATION
Training in scientific proof . . 280–82
Use of case books in the teaching of torts 359–63

LEGAL HISTORY
See *History of Law*

LEGISLATION
Analysis of briefs and arguments of counsel defending constitutionality of labor-welfare legislation 375–416
Combating totalitarian propaganda 107–41
Criticism of Renegotiation of Government War Contracts Act . 203–6
Significance of provision for pre-trial conference in Illinois practice act 453–65

LICENSES
Renewal:
Reviewability of FCC orders relating to renewal of licenses to radio stations 88–91

LIENS
Lienholders' Rights:
See *Bankruptcy*

M

MUNICIPAL CORPORATIONS
Police Power and Regulations:
Training of police 99–100
Powers and Functions:
Administration of municipal legal services 100–102
Property:
Right of municipal corporation to dispose of property acquired by condemnation 91–92

P

PATENTS
Extent of Use of Patent:
Development of German patents and cartels under Hitler . . . 49–69
Picketing:
See *Labor Law*

POLICE POWER
Interest of Public Safety:
Training of police 99–100

POLITICAL SCIENCE
Essays on Various Aspects of Government in the United States . 103–5

PRIVILEGED COMMUNICATIONS
See *Evidence*

PROCEDURE
Judicial mediation through pre-trial conference 453–65

PUBLIC OFFICERS
Eligibility to Office:
See *Courts*

R

REAL PROPERTY
Right of municipal corporation to dispose of property acquired by condemnation 91–92

RESTRAINT OF TRADE
Sherman Act:
Application to labor activities in restraint of trade 177–83
Secondary boycott 216–20

RULE IN SHELLEY'S CASE
Application 344–50

S

SHERMAN ACT
See *Labor Law; Restraint of Trade*

STATES
Relation to Federal Government:
Developments in the "negative implication" doctrine 27–48
Relation to Other States:
Power of state, where corporation has its seal, to tax transfer of shares, when testator was domiciled in another state 84–87
Study of states having faulty systems of amending their constitutions 142–76

STATUTES
Federal Statutes:
Foreign Agents Registration Act of 1938 109–11
Alien Registration Act 133–34
McKellar-Sumners amendments to Foreign Agents Registration Act 115–20
Summary of Renegotiation of Government War Contracts Act 193–97
Voorhis Act for registration of subversive organizations . . . 122–27
Interpretation:
Bankruptcy Act, c. X § 249 . . . 74
Chandler Act § 60a 220–27
Holding Company Act § 17 . . . 73
Municipal sales tax held to burden interstate commerce 42–45
Reviewability under Federal Communications Act of orders issued by the FCC 88–91
Sherman Act and Norris-LaGuardia Act in secondary boycott cases 216–20
State alien registration act held incompatible with federal act . . 40–45
State food and drug statute held to conflict with federal Renovated Butter Act 31–46
Wisconsin Employment Peace Act upheld against claim that it conflicted with Wagner Act . . . 37–40

T

TAXATION
In General:
Survey of federal taxation . . 502–4
Inheritance Taxes:
Constitutionality of state inheritance tax on transfer of corporate shares where corporation had its seat in state taxing and testator had been domiciled elsewhere 84–87
Power to Tax: State:
Multiple state inheritance taxation on the transfer of intangibles . 84–87
Who Is Subject to Tax:
Recent implications of the *Clifford* doctrine 488–95
Where income is from trust and settlor retains substantial ownership 488–95

TEACHING OF LAW
See *Legal Education*

TORTS
Defenses:
Liability of a charitable corporation 211–16
See *Legal Education*

TRADE UNIONS
See *Labor Law*

TRIAL
Judicial Mediation through Pre-trial Conference 453–65
The Adversary System 247, 249, 252–53, 275–78, 286
See also *Evidence*

TRUSTS
Powers and Obligations of Trustees:
Duty of trustee's agent to trust estate 207–11

U

UNEMPLOYMENT COMPENSATION
Arguments of counsel defending constitutionality of unemployment compensation acts . . 406–8

W

WAR
Effect on Labor:
See *Labor*
In General:
Effect on union agreements . . . 1–26
Wartime Legislation:
Renegotiation of government war contracts 193–206
State alien registration act held to conflict with federal legislative powers 40–45

WORKMEN'S COMPENSATION
Theory and Constitutionality:
Arguments of counsel defending constitutionality of workmen's compensation acts 391–94
The Jensen doctrine 339–44